

NO. 09-35826

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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JOHN DOE #1, an individual, JOHN DOE #2, an individual, and  
PROTECT MARRIAGE WASHINGTON,

Plaintiffs/Appellees,

v.

SAM REED, in his official capacity as Secretary of State of Washington,  
BRENDA GALARZA, in her official capacity as Public Records Officer  
for the Secretary of State of Washington,

Defendants/Appellants.

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On Appeal From The United States District Court  
District Of Washington, At Tacoma

No. C09-5456BHS  
The Honorable Benjamin H. Settle  
United States District Court Judge

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**REPLY BRIEF OF APPELLANT WASHINGTON COALITION  
FOR OPEN GOVERNMENT**

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## **I. INTRODUCTION**

When the people of the State of Washington adopted, by initiative, the Washington Public Records Act (RCW Ch. 42.56) in 1972, it was an emphatic step on the part of the citizens of the State to make sure that they remained "informed so that they may maintain control over the instruments that they have created." RCW §42.56.030. The Public Records Act was not an afterthought or a tag-on piece of legislation. Rather, it was a reminder that Washington citizens demand to be informed about what is occurring concerning the governmental process in their State so that they can make intelligent decisions about important issues.

Rather amazingly, however, the Appellees in this case (hereinafter "Sponsors") characterize the State Officials' stance in this litigation as "the State misguidedly [finding] themselves caught up in the PRA." (Appellees' Brief at 16). To label a State's interest in attempting keep its citizens informed as "misguided" is an interesting turn of phrase from a group that

purports to be promoting the concept of free expression under the First Amendment.

What the Sponsors have failed to do, however, is demonstrate that they carried their burden in the District Court of establishing irreparable harm to a protected interest by clear and convincing evidence, *Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423, 442, 94 S.Ct. 1013, 39 L.Ed.2d 435 (1974), and that the injunctive relief, as required to support any injunction, is in the public interest.

Disclosing, as mandated by the Public Records Act, the names of those individuals, acting as legislators, who are proposing a change in State law, is not the type of activity that the courts have prohibited as an infringement of free speech. In addition, even if such disclosure implicates constitutional protection, there is a compelling interest, as established under the Public Records Act, for citizens in the State to be able to review the conduct of government officials in validating signatures on referendum petitions and to be meaningfully

informed on the merits of referendums concerning who the promoters are of the same.

## **II. ARGUMENT**

### **A. Case Law Does Not Support That Signers of Referendum Petitions Are Entitled to Anonymity.**

Sponsors concede in their Brief that there are no reported cases holding that either signing or subsequent public disclosure of a referendum petition involves protected political speech. (Sponsors' Brief at p. 11). The one unreported case that Sponsors rely on for the proposition that signing a petition constitutes speech requiring further First Amendment analysis, *Hegarty v. Tortolano*, 2006 WL 721453 (D. Mass., 2006), is not remotely related to the facts at hand. In fact, the *Hegarty* case does not involve anonymous speech, which is the key issue before this Court. Rather, *Hegarty* involved a situation where firefighters had signed a petition and publicly posted the same, criticizing a city's contract with a new ambulance service; the firefighters sought relief in the courts because of alleged adverse employment actions taken against them. *Id.* at \*1.



Nor does the *Hegarty* case involve, as here, a referendum petition that, by state constitutional provisions, empowers citizens to act as legislators and requires submission of the signatures to the state.

Sponsors fail to challenge that, by virtue of Article II, Section 1(b), of the Washington Constitution, persons who sign a referendum petition are acting as legislators pursuant to the State's constitutional reservation of power to the citizens "to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature." Such legislative activity is traditionally an open process in this country, and the *Hegarty* case in no fashion suggests that the process should be closed to public review, particularly where the petitions in the *Hegarty* case themselves were publicly posted.

Simply put, there is no precedent holding, or even remotely suggesting, that proposing legislation by referendum should be cloaked in confidentiality and anonymity.

Nor do State attorney general opinions, announced well before the adoption of the Public Records Act by initiative of the people in 1972, suggest the contrary. There have been 36 years of implementation of the Public Records Act and judicial reinforcement in numerous cases by the Washington Supreme Court of the mandate for openness ingrained in the statute that render old attorney generals' opinions meaningless in the context of public disclosure. The Washington Supreme Court has referred to the language in RCW 42.56.030, the former preamble to the Public Records Act, as one of the strongest statements of legislative policy contained in any state statute. *Cathcart v. Anderson*, 85 Wn.2d 102, 107 (1975). As the court said in *Bellevue, John Does 1-11 v. Bellevue School District No. 405*, 164 Wn.2d 199, 189 P.3d (2008), "We have consistently construed the PRA [Public Records Act] as 'a strongly worded mandate for broad disclosure of public records.' Thus the [Public Records Act's] disclosure provisions are broadly construed and exemptions are narrowly construed."

Appellant State Officials are certainly not "misguided," in seeking to disclose to the public the petition, where their proposed action is based on (1) the provisions of the Washington State Constitution as to the fundamental legislative concept of referendums, (2) the broad mandate of the Public Records Act in favoring open government, and (3) the lengthy list of decisions of the State Supreme Court favoring broad disclosure of public records.

**B. Sponsors Misconstrue the Nature of the Public Records Act.**

In their Brief, the Sponsors demonstrate a fundamental lack of understanding as to the premise and underpinnings of the Washington Public Records Act. The basic premise of the Public Records Act is to deal with disclosure of public records. There is no provision in RCW Ch. 42.56 requiring that citizens must provide particular information to the State or other government agencies. Rather, RCW Ch. 42.56 requires only disclosure of records once filed with government agencies. Thus, Sponsors' argument that, if the referendum petitions are

made public, the next step is that the State could force every citizen to disclose how he intends to vote before an election, is without basis. The Public Records Act, which is the subject of this litigation, does not provide a mechanism whereby a citizen can require that a public record either be generated or filed with a particular state agency. In fact, government agencies have no duty to create a record in response to record requests and must only provide existing records for review. *Smith v. Okanogan County*, 107 Wn. App. 7, 14, 994 P.2d 857 (2000).

In other words, the Public Records Act does not enable the State to either require information to be filed with it or to disseminate information; it is a statutory scheme that applies to public disclosure of records owned, used or retained by government agencies. In addition, Sponsors' fanciful assertion that the State will now have the ability to require citizens to state how they will vote ignores statutory provisions that exempt from public disclosure how a citizen voted on a ballot. RCW 29A.04.206.

Similarly, Sponsors' argument, that requiring disclosure of the signers of petitions is underinclusive "because it does not compel those who oppose an initiative petition to identify themselves" (Sponsors' Brief, p. 32, fn. 14) reflects a misunderstanding of the Public Records Act, which pertains only to disclosure of records after they are filed with the State. If there were records that were filed with the State that reflect who opposed an initiative petition, then certainly those would generally be public records subject to disclosure. But WCOG has no knowledge that any such records exist. Moreover, this argument on behalf of Sponsors ignores the constitutional mandate set out in Article II, Section I, of the Washington Constitution that referendums proceed either by direction of the Legislature or "by petition signed by the required percentage of the legal voters." There is no countervailing constitutional requirement that opponents to a referendum submit any signed petitions or other documents to the State setting out opposition to a referendum.

Sponsors' misunderstanding of the underlying principles of the Public Records Act is also reflected in their statement that, in order for disclosure to be required, there should be some specific Washington statute requiring disclosure of the petitions. (Sponsors' Brief at 30). However, the Public Records Act mandates a process that is exactly the contrary. That is, public records are to be disclosed to the public, unless a provision of RCW Ch. 42.56 "or other statute...exempts or prohibits disclosure of specific information or records." RCW 42.56.070(1). In other words, in adopting the Public Records Act, the citizens of the State determined that records will be presumed to be available for public inspection unless an exemption provided otherwise. Certainly, RCW 29A.04.206 exempts individual ballots from public disclosure. However, to the contrary, poll books, precinct lists and current lists of registered voters are "available for public inspection and copying." RCW 29A.08.720(2). In other words, both in the Public Records Act and in statutes pertaining to the election

process, the people, as legislators, and the Legislature itself, have made an informed decision to protect individual ballots but, at the same time, have not adopted any statutory exemption protecting referendum petitions.

C. **Sponsors Fail to Refute the Public's Strong Interest in Overseeing the Actions of State Officials In Validating the Petition Signatures and in Acquiring Full Information Concerning the Proposed Legislative Enactment.**

Assuming, for the sake of argument, that signatures on a referendum petition, accumulated pursuant to the State Constitution under which citizens act as legislators, constitute protected speech, Sponsors have failed to refute the strong public interest, as reflected in the Public Records Act, (1) in overseeing the conduct of government officials in validating the petition signatures and (2) in obtaining full information about the referendum process.

Sponsors focus in their Brief on the lack of a compelling State interest in disclosure of referendum petitions because "the State fails to cite an instance where disclosure of an initiative

petition resulted in the detection of a fraudulent signature." (Sponsors' Brief at 30). Interestingly enough, Sponsors concede, at the same time, that while "initiative measures are routinely the subject of public records request," there have also been no reported instances where such public disclosure of signatures on petitions has discouraged the initiative process. In other words, initiatives routinely proceed by petition in the State of Washington, and such petitions are routinely publicly disclosed, and yet the process has gone forward unimpeded even though the signatures are made public.

Just as importantly, however, the Sponsors fail to address the significant public interest in the referendum process. As the preamble to the Public Records Act states, "The people, delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created." RCW 42.56.030. The



purpose of the [Public Records Act] is to keep public officials accountable to the people." *Daines v. Spokane County*, 111 Wn. App. 342, 347 (2002).

What the public is precluded from doing, as a result of the injunctive relief that has been entered, is to monitor the actions of State officials invalidating the petitions. Sponsors make the somewhat amazing statement in their Brief, pages 14-15, that if any Washington citizen is dissatisfied with the verification process, "he or she need not see the signatures" to have the verification process appealed to the court system. While it is true that a person need not see the signatures in order to initiate an action in Washington's Superior Court, it is also true that, in the absence of being able to review the petitions, a citizen has absolutely no basis for determining whether or not he or she is dissatisfied with the validation process that has occurred. To seek Court review without knowledge of the validation process suggests that a lawsuit in which a citizen challenged the State's powers would be frivolous on its face.

What the Sponsors suggest is that the validation process should be a matter limited to only State officials and those selected special interest groups that have the ability to observe the validation process. However, such a closed-door system is certainly not contemplated by Article II, Section I, of the Washington Constitution, and its underlying principle that a referendum process is a critical mechanism by which the citizens of the State can act as legislators nor by the history of this State, and other states, that the legislative process is an open process. Rather, the very fact that the State Legislature has adopted RCW §29A.72.240, giving any citizen dissatisfied with the Secretary of State's verification process, the right to bring a court challenge to the same, suggests that the public must have the ability to review the petitions in order to evaluate the State's validation process and whether a challenge should be brought.

As the Washington Supreme Court stated in *Progressive Animal Welfare Society v. Univ. of Washington*, 125 Wn.2d

243, 884 P.2d 592 (1994), one of the main principles behind the Public Records Act is to make sure that the government remains that of the people and not of "special interests" *Id.* at 251. Yet, the Sponsors' position raises the very specter that it is only "special interests," and not the public, who will be able to review, evaluate and potentially challenge the actions of the State in validating referendum petition signatures.

Contrary to this Court's recognition of the compelling interest of the State of California in providing voters complete disclosure as to who supports a ballot measure, *California Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088 (9<sup>th</sup> Cir. 2003), Sponsors argue that the informational interest that may constitute a compelling interest to support satisfaction of the strict scrutiny standard is limited only to information about those persons "financially opposing a ballot issue," citing *Canyon Ferry Road Baptist Church of East Helena, Inc. v. Unsworth*, 556 F.3d 1021 (9<sup>th</sup> Cir. 2009). The *Canyon Ferry* case does not stand for that proposition. While it is correct that

the issue in that case related only to financial disclosures, in no fashion did this Court make any determination that informational interests are not also implicated by who may sign a petition, regardless of financial support. In fact, the Court stated in *Canyon Ferry* that "the State articulates only one interest in defense of its disclosure scheme: providing its citizenry with information about the constituency supporting and opposing ballot issues. We are satisfied that this interest is 'important.'" *Id.* at 1031.

What the Court determined in *Canyon Ferry* is that a church's provision of a copying machine to make a few dozen copies of a petition was so *de minimus* as to impermissibly infringe on the church's free speech rights. *Id.* at 1034. "The court, however, declines to review in its entirety the constitutionality of Montana's disclosure requirements in the context of candidate elections or as applied to monetary contributions of any size." *Id.* at 1034. In other words, the reason the court's opinion was limited to financial support is

because that was the only issue presented in the case. What was not presented in the case, and what Sponsors concede lacks any precedential support, is the assertion that the referendum process, in terms of signed petitions submitted to a state, should proceed anonymously.

As pointed out in WCOG's opening Brief, Sponsors were denied similar injunctive relief in the State of California in their effort to enjoin disclosure of the names of persons who contributed \$100 or more to a campaign to prohibit marriage between homosexuals. *ProtectMarriage.com v. Bowen*, 599 F.Supp.2d 1197 (2009). In rejecting Sponsors' request for injunctive relief in that action, District Court Judge England succinctly described the interest of the State of California in disclosing the names of those persons who provide monetary support to a campaign, similar to that at issue in the current referendum petition:

Plaintiffs miss the point. California's interest in disclosure, an interest of paramount importance in the context of ballot measures, is based on its need to educate its electorate. The fact that plaintiffs'

opponents may use publicly available information as the basis for exercising their own First Amendment rights does not in any way diminish the State's interest.

To the contrary, '[k]eeping the electorate fully informed of the sources of campaign-directed speech and the possible connections between the speaker and individual candidates, [itself] derives directly from the primary concern of the First Amendment. The vision of a free and open marketplace of ideas is based on the assumption that the people should be exposed to speech on all sides, so that they may freely evaluate and choose from among competing points of view. One goal of the First Amendment, then, is to ensure that the individual citizen has available all the information necessary to allow him to properly evaluate speech. . . .

599 F.Supp.2d at 1219 (internal citation omitted).

Just as the citizens of the State of California have a vested interest in being informed about significant issues, so do the citizens of the State of Washington in knowing who the supporters of a petition are. The action of the citizens who have signed the petition has caused to be placed before the voters of this State on November 3, 2009, a measure to change a law that was duly enacted by the State Legislature in its most recent

session. Yet the people are being deprived of the fundamental knowledge of knowing who signed the petition, who were the citizen legislators that are asking that a significant change in Washington State law be implemented.

**D. Sponsors' Sought After Injunctive Relief Infringes on WCOG's First Amendment Right to Receive Information.**

Sponsors assert a need for confidentiality and anonymity as to signers of a public referendum petition based on the possibility that such petition signers may be exposed, in the words of Sponsors, to "uncomfortable conversations." Sponsors' Brief at p. 18. WCOG, on the other hand, is not faced with the mere possibility of infringement of rights but rather the actual deprivation of its right to receive full information about the referendum process, as reflected in the names of individuals who have proposed to the State that State law be changed. It is a long-recognized fundamental right of the public in this country to receive information. "The right of freedom of speech and press includes not only the right to utter

or to print, but the right to distribute, the right to receive, the right to read..." *Griswold v. Connecticut*, 381 U.S. 479, 482, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965). "[T]he Constitution protects the right to receive information and ideas. 'This freedom [of speech and press] . . . necessarily protects the right to receive . . . ' [Citations omitted.] This right to receive information, and ideas, regardless of their social worth [citation omitted] is fundamental to our free society." *Stanley v. Georgia*, 394 U.S. 557, 564, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969). "Self governance in the United States presupposes far more than knowledge and debate about the strictly official activities of various levels of government. . . . 'Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period.'" *Rosenbloom v. Metro Media, Inc.*, 403 U.S. 29, 41-42, 91 S.Ct. 1811, 29 L.Ed.2d 296 (1971) (internal citation omitted).



This Constitutional right to know was emphasized by the Washington Supreme Court in a Constitutional challenge by public officials to a requirement in an initiative (Initiative 276—the same initiative in which the Public Records Act was adopted) that that lobbyists and candidates for public office make certain financial reports to the State. *Fritz v. Gorton*, 83 Wn.2d 275, 517 P.2d 911 (1974).<sup>1</sup>

In pronouncing Constitutional the public filing requirements of Initiative 276, the Court noted that it accepted "as self evident the suggestion in the brief of Interveners (the League of Women Voters) that the right to receive information is the fundamental counterpart of the right of free speech." 83 Wn.2d at 296. While the Court noted privacy concerns

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<sup>1</sup> Initiative 276, which brought about not only the Public Records Act but required filing of information relating to financing of campaigns with the State, had broad support in the State of Washington. The Initiative was sponsored by an ad hoc group called the Coalition for Open Government, the American Association of University Women, the League of Women Voters of Washington, the Municipal League of Seattle and King County, Common Cause, Young Republicans of King County, the Washington Environmental Council, the Washington State Council of Churches, the Seattle Press Club, and the Seattle-King County Bar Association, Young Lawyers Section, among others. *Fritz v. Gorton, supra*, 83 Wn.2d at 285-286.

expressed by those involved in political campaigns, the Court stated that "the right of the electorate to know most certainly is no less fundamental than the right of privacy." *Id.* at 298.

Among the arguments rejected by the Washington Supreme Court in *Fritz v. Gorton* was the argument of the lobbyists and public officials that "their First Amendment right to petition government as extended in the states by the Fourteenth Amendment is violated by the registration and reporting requirements" of certain sections of the Initiative relating to reporting of financial affairs. *Id.* at 303-304.

In reversing the trial court's determination that the filing requirements of Initiative 276 infringed on the right of petition of the public officials and lobbyists, the Supreme Court emphasized that: "Initiative 276, as we have noted, was created by the people for the express purpose of fostering openness in their government. To effectuate this goal, it is important that disclosure be made of the interests that seek to influence governmental decision making. . . . The electorate, we believe,

has a right to know the sources and magnitude of financial and persuasional influences upon government." *Id.* at 309.

WCOG, as a member representative of the public, has a right to know who signed referendum petitions seeking a change in State law. Review of the petitions would allow WCOG to evaluate the action of State Officials in verifying the signatures on the petition and would provide WCOG and its members the requisite knowledge concerning who is demanding that reversal of a legislative enactment be placed before the voters in November of this year.

If the petitions are not made available for public review prior to the election, the rights of WCOG members to know and receive information, as manifested in numerous decisions of the United States Supreme Court, will be forever lost in terms of utilization of the petitions to evaluate the referendum that is being placed before the voters. The ability of the public to monitor the actions of State Officials in verifying the signatures and making an informed decision as to whether or not the

verification process should be challenged will also be forever lost. Set against this certain deprivation of First Amendment rights of WCOG members and other citizens of the State of Washington is the possibility that signers of the petition may be exposed to "uncomfortable conversations" by opponents to the referendum.

The Constitutional right of the public to know and receive information to evaluate how its government operates, will be irretrievably lost if the injunctive relief is granted.

**E. Sponsors Have Not Introduced Evidence of Irreparable Harm.**

As the basis for undercutting the ability of the people in the State of Washington to be provided full discourse as to the merits of a referendum that they are being asked to vote on in November, Sponsors offer 59 recycled affidavits that were originally submitted in the *ProtectMarriage.com* case, *supra*, in which both injunctive and summary judgment were denied by the Eastern District of California. The concern as to disclosure of the referendum petitions as expressed by Sponsors, is

summarized in their Brief, at page 18, as originating from the fact that "two groups have indicated that the only reason they wish to obtain the names of the petition signers is to publish them on the internet with the express purpose of encouraging people to have uncomfortable conversations with the petition signers" (emphasis supplied).<sup>2</sup> In other words, in order to avoid exposing petition signers to "uncomfortable" conversations, the Sponsors are requesting that this Court uphold a determination that the Washington Public Records Act is unconstitutional in requiring the disclosure of referendum petitions, a determination that will potentially have ramifications far beyond the referendum measure at issue.

This approach was soundly rejected by the court in

*ProtectMarriage.com*:

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<sup>2</sup> The Sponsors take this "uncomfortable conversation" language from a Press Release and Statement from KnowThyNeighbor.org's co-director, Aaron Toleos. (ER 105). The full quote is, "[T]hese conversations can be uncomfortable for both parties, but they are desperately needed to break down stereotypes and to help both sides realize how much they actually have in common." Thus, referendum opponents appear to seek dialogue to bring the parties together rather than instigating divisive confrontations.

The allowance of free expression loses considerable value if expression is only partial. Therefore, disclosure requirements, which may at times inhibit the free speech that is so dearly protected by the First Amendment, are indispensable to the proper and effective exercise of First Amendment rights. Citing *Fed. Election Commission v. Furgatch*, 807 F.2d 857, 862 (1987).

Judge England also cogently summarized the strong interest of the people of California in obtaining information about government process:

The court observes that plaintiffs, the backers of a historically non-controversial belief, seemed genuinely surprised to be on the receiving end of such powerful discord. However, such surprise does not warrant an injunction against the enforcement of the State of California's laws or this Court's censorship of information pertaining to one side of one initiative, information that, years ago, the voters of California determined should be available to the public. Indeed, the Court's acceptance of plaintiffs' argument would effectively render California's legislative mandate obsolete. Such a decision would establish precedent for any group backing any controversial ballot initiative to come before this Court with evidence of the actions of fringe opposition groups to support their arguments for exemption from California's disclosure requirements. Such a holding would thwart the will of California's government and the will of the electorate to garner

objective information necessary to evaluate their own legislation.

599 F. Supp. at 1219.

At issue in the California case was legislation requiring reports to be filed with the state as to contributions to change the California Constitution to prohibit marriage between homosexuals. There is no argument in the case at bar that the State of Washington does not have the constitutional right to have submitted to the State the names of individuals who propose a referendum to change a statute enacted by the Legislature. Moreover, there is no argument that the Washington Public Records Act, adopted more than thirty years ago by initiative of the people of the State of Washington, mandates disclosure of the petitions. The result that WCOG fears is that expressed by Judge England—that any time a controversial referendum is submitted to the State and there is a suggestion that petition signers might be subjected to "uncomfortable conversations," the desire of the citizens of the State of Washington, as reflected in the Public Records Act, to

garner all information necessary to evaluate publicly proposed legislation would be thwarted and the people would be denied the very fundamental knowledge of knowing who supported, as citizen legislators, the changing of State law.

**F. The Public Records Act is Narrowly Drawn.**

Sponsors' argument that there is a more narrowly drawn alternative to complete disclosure -- i.e., allowing special interest groups to observe the signature verification process -- focuses only on the narrow State interest in ensuring that persons who sign petitions are eligible voters in the State of Washington and ignores the broader public interest in overseeing government officials' conduct and in being fully informed about the referendum process. As indicated above, this narrows the validation process to one only of "special interests" groups and ignores the right of the public, as mandated by the public's Public Records Act and the State Constitution, to be an integral part of the oversight process.



Moreover, as indicated above, Sponsors ignore that neither the citizens of this State, by initiative or referendum, or the Legislature, have enacted provisions protecting the confidentiality of petition signers even though a state statute, RCW 29A.04.206, protects individual ballots from disclosure.

In addition, while the Public Records Act is certainly a broad mandate for public disclosure, it is also narrowly drafted to the extent it states that a provision of RCW Ch. 42.56, or other statute, may exempt or prohibit disclosure of specific information or records. RCW 42.56.070. Within the provisions of the Public Records Act there are 95 exemptions that prohibit disclosure of certain public records. RCW 42.56.230 – 42.56.480. Some of these provisions are very specific, such as those relating to veterans' discharge papers, RCW 42.56.440, and all information relating to insurance and financial institutions, RCW 42.56.400. Some of the exemptions are more general in nature, such as those pertaining to investigative and law enforcement information, RCW 42.56.240, or work

product, RCW 42.56.290. In addition, there are at least 222 other statutes in the State of Washington exempting from disclosure specific records and there are at least 16 federal statutes, which have application to exemption of public records in the State of Washington. *Public Records Act Deskbook: Washington's Public Disclosure and Open Public Meeting Laws*, Chapter 12, pages 12-1 through 12-4 (2006).

Thus, while there are at least 317 specific statutory exemptions in the State of Washington prohibiting disclosure of certain records and 16 federal statutes exempting other records, none of these provisions exempt referendum petitions that have been signed by Washington voters, acting as citizen legislators.

To the extent that both the original statutory scheme, adopted by initiative, and subsequent legislative enactments have addressed and expanded upon exemptions that protect disclosure of public records, the Public Records Act is a narrowly drafted statute and yet none of these exemptions

provide a cloak of confidentiality as to the signers of referendum petitions.

Moreover, where the stated purpose of the Public Records Act is public oversight of the actions of government officials and disclosure to the public of records on which to base informed decisions, there is no less restrictive alternative than disclosure that would protect these valued public interests. Public disclosure of the referendum petitions is the sole option.

### **III. CONCLUSION**

For the reasons stated herein, and in WCOG's Opening Brief, the preliminary injunction granted in this case should be reversed.

Respectfully submitted this 30<sup>th</sup> day of September, 2009.

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### **CERTIFICATE OF COMPLIANCE**

I certify that pursuant to Fed.R.App.P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, the attached brief is proportionately spaced, has a typeface of 14 points or more and contains 5,159 words.

September 30, 2009  
Date

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